Supreme Court, U.S.
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No. 94-1820

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1994

MATTHEW AND LEA DARRAH, AKA LEA TYLER,

Petitioners,

v.

CHILDREN'S HOME SOCIETY OF CALIFORNIA, DEE HESZLER, DAVIS CRISIS PREGNANCY CENTER, KATHY HUNTZIKER, et. al.,

Respondents.

On Petition for Writ of Certiorari to the California State Court of Appeal for the Third Appellate District

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REPLY BRIEF TO RESPONDENTS' OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Brenda J. Russo
E. Jenny Wayland
Counsel of Record
Law Offices of Russo & Soroch
740 Texas Street, Suite 202
Fairfield, CA 94533
(707) 427-6777

Counsel for Petitioners,
Matthew and Lea Darrah

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Matthew and Lea Darrah

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JURISDICTION

Respondents argue that it is not possible to determine if jurisdiction is proper because of "numerous misrepresentations of fact and misapplication of constitutional and case law authorities."

Respondents are mistaken. Federal question jurisdiction is clearly invoked under 28 U.S.C. §1257(a). This case presents an important federal question regarding the degree of protection afforded by the United States Constitution to the most fundamental of protected rights -- the rights of a parent to the care and custody of a natural born child. Even if respondents were correct in their assertion that petitioners' authority was inapplicable, their arguments would nonetheless not be relevant to the issue of jurisdiction and would instead go only to the weight of petitioners' arguments.

1. The issues presented involve questions of law properly presented to the highest state court.

Respondents argue that the numerous violations of state adoption regulations alleged by petitioners were not presented

to the highest state court and should not be considered by this Court to the extent they require interpretation of material facts. This is not correct. Petitioners do not ask this Court to consider their dispute with the lower courts' findings of fact. Rather, they assert a dispute with issues of law, including the interpretation and application of law by the lower courts to constitutionally protected rights. Petitioners were not required to petition below for rehearing.

The facts surrounding the actions taken by respondents prior to securing relinquishments from petitioners are not in dispute at this point. What is in dispute is whether or not the facts as found to be true by the lower court violated state regulations, and the extent to which such violations deprived petitioners of due process in relation to

protected rights. These issues raise questions of law and petitioners respectfully assert that the trial court and the Court of Appeals misinterpreted and misapplied the law in relation to the facts of this case.

For instance, petitioners assert that the agency violated Sections 35133 and 15134 of the California Code of Regulations, which require the agency to counsel and advise parents regarding specific rights and options, including the right to an attorney, alternatives to adoption, and available resources. There is little dispute at this point regarding what action respondents took towards complying with the regulations. Instead, the dispute involves whether or not the actions taken constituted regulatory compliance and afforded petitioners meaningful due process, as a matter of

law. As the trial court found and the Court of Appeals affirmed, the agency did not specifically do some of the things they are required to do. But, they did give petitioners a blank, finely printed, single-spaced, multi-paged form entitled "Statement of Understanding" and they assert that merely by giving petitioners this form, they were thereby in compliance with the regulations regarding counseling and advisement of rights. Petitioners dispute the agency's position, as well as the court's finding that an adoption agency has no greater obligation to parents than to provide them with a blank, single spaced, multi-paged form. That mere act on the part of the agency cannot reasonably constitute "counseling" and advisement of rights, resources, and alternatives within the meaning and purpose of the regulations.

The interpretation of what the state, or an agency acting under authority delegated by the state, must do in order to afford parents due process of law is not merely a question of fact. Rather, it is an important question of law -- which petitioners now look to this Court to resolve.

2. The authority offered by petitioners is highly relevant and compels the relief sought herein.

Respondents argue that petitioners' authority is inapposite to the narrow field of adoptions, since the cases petitioners offer relate to matters of constitutional law, and not specifically to adoption. Respondents' argument in essence is that constitutional law is inapplicable to adoption. No authority is or can be cited for such an assertion, as none exists. It bears noting, however, that this position reflects the agency's

approach to petitioners and to the state regulations throughout these proceedings. Insofar as adoption matters inherently involve fundamentally protected rights, constitutional law is applicable. The cases cited by petitioners substantively relate to constitutionally protected rights, including the rights which exist between parents and their children.

As is argued in the Petition herein, this Court has wisely enumerated a cautious and balanced three-pronged analysis which must be considered in determining what degree of process is mandated by the Constitution when a state actor becomes involved with a protected liberty interest, such as the right to parent one's child. (Lassiter v. Department of Social Services (1981) 452 U.S. 18; Matthew v. Eldridge (1976) 424 U.S. 319.) That analysis is as applicable

to the facts of this case and to the constitutionally protected rights of petitioners, as it is to any case in this country wherein a state actor engages in conduct which serves to terminate a constitutionally protected right.

CONCLUSION

Respondents' arguments are wholly unpersuasive and fully fail to address the constitutional issues raised herein. Petitioners' relinquishments can not properly be deemed a knowing, intelligent and voluntary waiver of constitutionally protected rights, when the sole process afforded by the agency does not comport with the only process mandated by the state. The question once again is what conduct on the part of the agency is sufficient to afford due process of law under the facts of this case. Surely, we have not reached a point in the world of

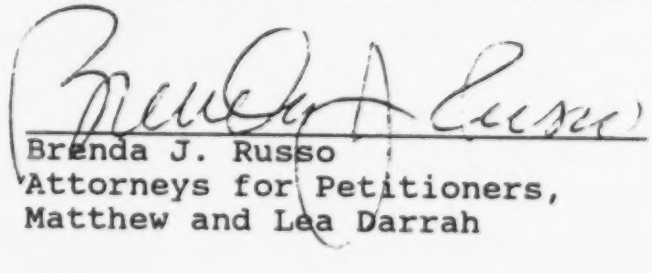
adoptions where an agency may merely hand a parent a form, obtain a signature, and thereupon conclude that they have appropriately advised and counseled the parent regarding rights and options. The relationship between form and substance must be considered and must be weighed in favor of protected rights. Otherwise, there are no protected rights, and persons such as petitioners are left with only the appearance of protected rights. When considering the consequences of adoption and relinquishment, the need for careful, lawful conduct on the part of agencies is apparent. A number of adoption cases have faced legal scrutiny in recent years. Each of them has at least one factor in common with this case. In each, the applicable laws surrounding the adoption process were not complied with early in the proceedings.

It is only through adherence to an identifiable state regulatory process that irreparable harm can be prevented. Public policy compels and due process requires that state regulated adoption agencies comply with applicable state regulations in order to obtain a knowing, voluntary and intelligent relinquishment of parental rights, prior to placing a child for adoption.

Dated: June 15, 1995.

Respectfully submitted,

LAW OFFICES OF RUSSO & SOROCH



Brenda J. Russo
Attorneys for Petitioners,
Matthew and Lea Darrah